HOO HUA

v.

LEE HIN & ORS.

FEDERAL COURT, JOHOR BAHRU
SALLEH ABAS LP
WAN SULEIMAN ACTING CJ (MALAYA)
HASHIM YEOP SANI FJ
[CIVIL APPEAL NO. 308 OF 1983]
3 SEPTEMBER 1984

LANDLORD AND TENANT: *Rent-controlled premises - Whether appellant was breaking consent judgment by occupying a bigger space.*

CIVIL PROCEDURE*: Originating motion - Whether learned Judge's rejection of the appellant's originating motion to stay the issue of the writ of possession a proper exercise of discretion.*

The respondents are the owners of certain rent-controlled premises, a certain portion of which was occupied by the appellant as a sub-tenant. By consent judgment the appellant agreed to give vacant possession of the portion occupied by her.

The appellant contended that possession was to be delivered only upon the respondents obtaining a decontrol certificate from the Rent Control Tribunal. The respondents contended that the appellant has since occupied a bigger portion of the premises then she had done previously. The respondents applied to the Magistrate's Court for leave to issue writ of possession in order to execute the consent judgment which subsequently was allowed. The appellant responded by filing action in the same Court to set aside the consent judgment. She also applied for the stay of the execution of writ of possession which subsequently was rejected.

The appellant appealed against the decision of the Magistrate and also applied by *ex parte* Originating Motion to the High Court to stay the writ. The learned Judge refused the appellant's application on the Originating Motion and gave no reason for so doing. The appellant appeals against the decision of the learned Judge.

Held:
Since the appellant had already vacated the premises, an order to stay execution is completely academic and does not in any way prejudice the appellant in pursuing her suit to set aside the consent judgment.

[Appeal dismissed with costs.]

For the appellant - Christopher Peter; M/s. Peter & Co.
For the respondents - Christian Chandran Aiyathurai; M/s. C.C. Aiyathurai & Co.

JUDGMENT

Salleh Abas LP:

The respondents are the owners of certain rent-controlled premises, a certain portion of which was occupied by the appellant as a sub-tenant. The respondents sued the appellant for the recovery of vacant possession of this portion of the premises. The suit ended in a consent

judgment agreed and recorded on 12 January 1982 to the effect that the appellant had to give vacant possession of the portion occupied by her. The consent judgment specified no date as to when possession was to be delivered.

But it was the contention of the appellant that possession was to be delivered only upon the respondents obtaining a decontrol certificate from the Rent Control Tribunal. The respondents did not deny this contention and on the contrary seemed to agree with it. What they disputed is that the appellant has since occupied a bigger portion of the premises than she had done previously. Thus subsequently on 24 September 1983 the respondents applied to the Magistrate's Court for leave to issue writ of possession in order to execute the consent judgment. The appellant responded by filing an action in the same Court to set aside the consent judgment on the grounds of fraud, misrepresentation and undue influences. She also applied for the stay of the execution of writ of possession.

On 2 November 1983 the Magistrate allowed the respondents' application for leave to issue writ of possession and at the same time refused the appellant's application for the stay of the writ. As a result the appellant appealed to the High Court against the decision of the learned Magistrate, and in addition she applied by an *ex parte* Originating Motion to the High Court to stay the writ. Mohamed Yusof J who heard the Originating Motion refused the appellant's application and gave no reason for so doing. It appears that he was unhappy at the absence of counsel for the appellant when the motion came before him. Now the appellant appeals to us against that decision.

From the narration of these facts there are now still two proceedings pending between the parties concerning this portion of the premises, firstly the appellant's civil action in the Magistrate's Court to set aside the consent judgment and secondly the appellant's appeal in the High Court against the Order of the Magistrate granting leave to issue writ of possession.

Obviously the multiplicity of the proceedings which were started by the appellant concerns a basic issue relating to the nature and scope of the consent judgment. Whilst it is the contention of the appellant that the consent judgment was not absolute but conditional upon the respondents obtaining a decontrol certificate in respect of the premises, the respondents' contention is that the appellant had breached the consent judgment by occupying a bigger portion than what she had done previously. However, in the present appeal we are not concerned with either of those issues. We are only concerned to see whether the rejection of the appellant's Originating Motion to stay the issue of the writ of possession by Mohamed Yusof J was a proper exercise of discretion. As to this we are informed by Counsel that the appellant has already vacated the premises and rented another premises paying a fairly high rent. Counsel for the respondents informed us that they were prepared to let the appellant occupy the portion formerly occupied by her provided that she does not extend her occupation to other parts not occupied by her previously. Counsel for the appellant disputed this statement.

In view of this information it seems to us that the difference between the parties is whether the appellant was breaking the consent judgment by occupying a space bigger than what she had occupied previously. In our judgement, since the appellant has already vacated the premises, an order to stay execution is completely academic, and does not in any way prejudice the appellant in pursuing her suit to set aside the consent judgment. Should she win, she could always be restored or entitled to damages unless a decontrol certificate is obtained. Counsel for the appellant informed us that he apprehended that a decontrol

certificate would be granted now that the appellant is out of the premises. As to this we are not in a position to restrain the Rent Control Tribunal from issuing the certificate in present proceedings. This matter is completely irrelevant for the purpose of this appeal, although it may have an important bearing in other proceedings or elsewhere.

Hence, we dismissed the appeal with costs and we ordered that the deposit be paid to the respondents as agreed costs.

Also found at [1985] 1 CLJ 45